Software Rights Archive, LLC v. Google Inc. et al
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EXHIBIT 16

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT

---o0o---

SOMTAI TROY CHAROENSAK, and
MARIANA ROSEN, individually,
and on behalf of all others
similarly situated,

Plaintiff,

vs. No. C0500037 JW

APPLE COMPUTER, INC.,

Defendants.

______________________/

DEPOSITION OF SOMTAI TROY CHAROENSAK

Taken before EARLY K. LANGLEY, RMR

CSR No. 3537

January 12, 2007

ef515386-2108-40f4-b246-b6410abe72a7

DEPOSITION OF SOMTAI TROY CHAROENSAK

BE IT REMEMBERED, that pursuant to Notice, and on the 12th day of January 2007, commencing at the hour of 9:07 a.m., in the offices of Jones Day, 555 California Street, 26th Floor, San Francisco, California, before me, EARLY K. LANGLEY, a Certified Shorthand Reporter, personally appeared SOMTAI TROY CHAROENSAK, produced as a witness in said action, and being by me first duly sworn, was thereupon examined as a witness in said cause.

---o0o---

ROY A. KATRIEL, The Katriel Law Firm, 1101 30th Street NW, Suite 500, Washington, D.C. 20007, appeared on behalf of the Plaintiff.

MICHAEL M. GOLDBERG, Glancy, Binkow & Goldberg, LLP, 1801 Avenue of the Stars, Suite 311, Los Angeles, California 90067, appeared on behalf of the Plaintiff.

ROBERT A. MITTELSTAEDT, TRACY STRONG, Jones Day, 555 California Street, 26th Floor, San Francisco, California, appeared on behalf of the Defendant Apple Computer.

ALSO PRESENT: Nick Silva, Tele-Video Production Services, Oakland, California.

Case No. C0500037 JW, filed in the United States District Court, Northern District of California.

This deposition was noticed by Robert Mittelstaedt for the defendant.

Would the counsel for the parties please identify themselves and for whom they're appearing.

MR. KATRIEL: Good morning. Roy Katriel from the Katriel Law Firm in Washington, D.C. on behalf of the defendant.

MR. GOLDBERG: Michael Goldberg, Glancy, Binkow & Goldberg, on behalf of the plaintiff.

MS. STRONG: Tracy Strong, Jones Day, on behalf of the defendant.

MR. MITTELSTAEDT: Bob Mittelstaedt, Jones Day, defendant.

THE VIDEOGRAPHER: Would the counsel please state any stipulations or statements that they would like on the record at this time?

MR. MITTELSTAEDT: None.

THE VIDEOGRAPHER: The court reporter may now swear in the witness.

SOMTAI TROY CHAROENSAK,

sworn as a witness,

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testified as follows:

EXAMINATION BY MR. MITTELSTAEDT:

Q. Would you state your full name and address, please?
A. My name is Somtai Troy Charoensak. And my address is 2636-24th Avenue San Francisco, California 94116.
Q. And would you do me a favor and just pronounce your last name slowly one more time?
A. It's pronounced Charoensak.
Q. Charoensak?
A. So phonetically I guess it's J-u-l-u-n and then "sack."
Q.
A.
Q
A.
Q.
A.

REDACTED

Q. Have you ever had your deposition taken before?
A. No.
Q. Let's take a couple of minutes and talk about the procedure to make sure you're comfortable with it.

time, my -- my computer doesn't have a lot of -- didn't have a lot of storage capacity, so I would delete the music, thinking that I had it on my iPOD, and that, because I purchased it, it is mine and I could, you know, later use it, but I soon realized that that is not the case.

Q. So, initially, you got the music into your iTunes library, put it onto your iPOD, and then deleted it from the iTunes library on your computer?

A. Correct.

Q. And then when you wanted to burn a CD with that music that you had deleted, you encountered problems, is that what you are saying?

A. Correct.

Q. And then at some point, did you stop deleting the music from the iTunes library on your computer?

A. Yes, I did.

Q. And once you stopped deleting that music, then were you able to burn CDs?

A. Only on that computer, yes.

Q. So the problem that you encountered was that you were deleting music from the iTunes library and that made it impossible, as you understood it at least, to burn CDs with that music that had been deleted; right?

A. Correct.

Q. And that's the problem you were complaining to Ms. Wong about?

A. Not -- not exactly.

Q. Okay. What problem were you complaining to Ms. Wong about then?

A. That I was -- I was locked out of the music that I purchased. I think that's the main complaint, that I realized that the music on my iPOD, although that I paid for it and it was mine, I had no access to it. That was the main complaint that I had. The fact that I couldn't burn a CD was just a result of that, that I was locked out of my own music that I purchased.

Q. Well, you weren't locked out of it as you used that term, as long as you kept the music in your iTunes library on your computer; correct?

A. I -- I was locked out of it because I had only one choice of being able to use that music. It was either on my iPOD or in the iTunes that I initially purchased the iTunes on the computer that I used to purchase the music, and then any other time I would try to have access to that file

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I would not be able to have access to it.

Q. Okay. When you -- when you keep the music from Apple Store in the iTunes library, you continue to have access to it; correct?

A. Just on the computer that I purchase, and using the iTunes, yes.

Q. And you know you can also burn a copy of that music as long as you have not deleted it from your iTunes library; correct?

A. I know that, yes, yes.

Q. When did you learn that?

A. After -- well, after I deleted the file, once or twice, I figured it out that I would have to burn it on the computer that I purchased it, and then I would be able to delete it because then I had a -- a, I guess a backup or I would have the CD.

Q. And have you done that now already, burned copies of music that you downloaded from Apple?

A. Yes.

Q. How many times have you done that?

A. I don't know the exact number.

Q. More than -- more than ten times?

A. I would say at least more than eight times.

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purchased that in late 2004.

Q. Do you remember the month?

A. I believe it's December but I'm not totally sure on the exact month.

Q. And at that time, had you bought the new G4 or the PowerBook yet?

A. Oh, G4. I don't believe so.

Q. So, as far as you can recall, the computer you were using when you bought the iPOD was the Dell laptop or the first G4, is that correct?

A. Yes.

Q. Where did you buy the iPOD?

A. The iPOD I purchased in Stonestown at an Apple Store.

Q. And what model did you get?

A. I -- I don't know the exact model but it's the 20 gigabyte.

Q. How much did you pay for it?

A. I paid less -- a little less than $300. I had a student discount.

Q. How much was the student discount worth?

A. I believe 10 percent, but I'm not sure on the exact amount.

Q. How did you decide to buy an iPOD?

A. I decided to buy an iPOD -- well, first I was looking at all the MP3 players that were available, and at that time, the two that I was looking at was the iPOD and the, I believe it is the Rio, the Rio.

And at that time one of my co-workers had a Rio that she used to go to the gym with and it was a lot less than the iPOD, but the ability to use iTunes -- she couldn't use iTunes with that, and also, she didn't -- she couldn't -- I believe at the time she couldn't -- she had problems storing data files which was one of the reasons that I wanted to buy an iPOD also because I needed to store huge movie files from school, so I needed something I could also use as an external hard drive.

And so I decided to pay an extra for an iPOD because I would have access to iTunes and I would be able to use it as an external hard drive. And also a big thing was that the Rio, I remember I couldn't -- I didn't -- it wasn't Mac compatible, I believe, and so I just decided to spend the extra money and get an iPOD that I could use, you know, for school. That was one of the big reasons.

And at the time, the whole thing that

forced me to go that direction was I was using a disk player and it had gotten stolen at the gym, so I had no -- nothing. So I figured that I was going to spend $100 for a new disk player, I might as well invest in an MP3 player. And that's when I started looking for an MP3 player.

And also, at the time, at school, I was having to burn huge amount of data onto CDs, so it was taking a lot of time, so I needed something I could use as an external hard drive.

Q. Any other reason that you bought an iPOD?

A. Yeah. I think those were the three deciding factors.

Q. Okay. At the time you were using a CD player?

A. Right.

Q. That's what you were referring to by the disk player?

A. Yes.

Q. And, so you were going to replace that and your decision was do you buy another CD player or do you buy an MP3 player?

A. Yeah. At that time, it was about $100 for another disk player, and at that time, my co-worker had an MP3 player, and she was like why

Q. The difference was more than $100?

A. The difference was more than $100, yes.

Q. Did your friend or your co-worker, Ms. Hill, tell you she was satisfied with her Rio?

A. No, she was -- she -- she didn't -- she had some kind of problem with it. I forgot exactly what it was, but she -- no, she didn't really like the Rio she had.

Q. Was that another factor that led you to buy an iPOD?

A. Yes, it was.

Q. Now, when you bought the iPOD, how did you intend to use it?

A. I intended to use it to listen to my music. I wanted to transfer the CDs that I own on to the MP3 player so that I could have access to it, you know, on the train, or in the gym. And I also intended to use it as an external hard drive.

Q. And what music did you have at the time?

A. Just CDs.

Q. And were you able to use the iPOD in the way that you had envisioned?

A. Yeah. Uh-huh.

Q. Okay. When you went to Stonestown to buy the Apple iPOD, did you -- do you remember talking

Q. And how did you go about putting your CD collection onto your iPOD?

A. I just, you know, insert the CD and then import through iTunes.

Q. And so you would get the music into your iTunes library?

A. Correct.

Q. On your computer; right?

A. Right.

Q. And then how would you get it from there to your iPOD?

A. Just drag and drop.

Q. When you say you were transferring, in effect, your CD collection, where did you get the CDs? Were they all CDs that you had purchased?

A. Yes.

Q. Were there any CDs that you had burned yourself?

A. Yes, I believe so.

Q. And can you estimate for me what, about how many CDs you put onto your computer and then onto your iPOD?

A. I would say approximately 75 percent of the music that I have on my iPOD currently is from my CD collection.

As of the time you bought the iPOD, do you think you had any music that was actually stored in any of your computers, you know, whether in the iTunes library, or in these other Windows applications?

A. I don't believe so. You mean like in, I guess, in Windows it has that My Music Folder?

Q. Right.

A. Yeah. I don't believe I had any music stored in those. If I -- if I recall correctly, I think that there is some kind of sample music that comes automatically downloaded, but I've never -- I don't recall personally putting music into that prior to having iTunes.

Q. And that's because up to that point, you had used the computer just to play the music from your CD collection rather than to store it; is that right?

A. Correct. Yes.

Q. And is it also correct that at the time you bought the iPOD, you had not bought any music from Apple's online store, is that correct?

A. Yes.

Q. You first bought music from Apple's online store after you bought the iPOD; correct?

A. Yes.

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

I, EARLY K. LANGLEY, do hereby certify:

That SOMTAI TROY CHAROENSAK, in the foregoing deposition named, was present and by me sworn as a witness in the above-entitled action at the time and place therein specified;

That said deposition was taken before me at said time and place, and was taken down in shorthand by me, a Certified Shorthand Reporter of the State of California, and was thereafter transcribed into typewriting, and that the foregoing transcript constitutes a full, true and correct report of said deposition and of the proceedings that took place;

IN WITNESS WHEREOF, I have hereunder subscribed my hand this 14th day of January 2007.

Early K Langley

EARLY K. LANGLEY, CSR No. 3537
State of California

EXHIBIT 17

CERTIFIED COPY

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOMTAI TROY CHAROENAK AND MARIANNA ROSEN, etc.,	)	
Plaintiffs,	)	
	)	Civil Action C-05-00037
vs.	)	
	)	
APPLE COMPUTER, INC.,	)	
Defendant.	)	

DEPOSITION OF MARIANNA ROSEN

January 24, 2007

236593

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BY: ROBERT A. MITTELSTAEDT, ESQ.

A L S O P R E S E N T :

THOMAS DELVECCHIO, Videographer

10:15:37 THE VIDEOGRAPHER: This is tape
10:15:38 number one of the videotaped deposition of
10:15:40 Marianna Rosen taken by Defendant in the
10:15:43 matter of Somtai Troy Charoenak, et al.,
10:15:50 Plaintiffs versus Apple Computer, Inc.,
10:15:53 Defendant, in the United States District
10:15:53 Court for the Northern District of
10:15:57 California, Civil Action No. C-05-00037.
10:16:06 This deposition is being held at the
10:16:07 office of Jones Day, 222 East 41st Street,
10:16:13 New York, New York. Today is Wednesday,
10:16:17 January 24th, 2007. The time is 10:17 a.m.
10:16:24 My name is Thomas Delvecchio from
10:16:26 the firm of Barclay Court Reporters. I am
10:16:29 the legal video specialist.
10:16:31 The court reporter is Josephine
10:16:32 Fassett in association with Barclay Court
10:16:35 Reporters.
10:16:39 For the record will counsel please
10:16:41 introduce themselves?
10:16:43 MR. MITTELSTAEDT: Bob Mittelstaedt
10:16:43 for Apple.
10:16:45 MR. KATRIEL: Good morning. Roy
10:16:46 Katriel from The Katriel Law Firm for the
10:16:49 Plaintiffs.

10:16:49 THE VIDEOGRAPHER: Thank you.
10:16:51 Now will the court reporter please
10:16:51 swear the witness?
10:16:59 M A R I A N N A R O S E N, the witness, having
10:16:59 been duly sworn, was examined and testified
10:16:59 under oath as follows:
10:17:00 EXAMINATION BY
10:17:01 MR. MITTELSTAEDT:
10:17:02 Q Good morning.
10:17:03 A Good morning.
10:17:03 Q If you would state your full name
10:17:05 and address for the record, please.
10:17:07 A Marianna Rosen, 236 Tillou Road,
10:17:08 South Orange, New Jersey, the Zip Code is 07079.
10:17:14 Q And you're aware you're under oath
10:17:16 today, correct?
10:17:17 A I am aware.
10:17:19 Q Have you given testimony before
10:17:19 either in court or by way of deposition?
10:17:22 A I don't think so. I mean, when I
10:17:24 became an American Citizen I guess that was sort
10:17:27 of a similar process. I had to do an oath. I
10:17:30 don't think I ever -- no, I was robbed four years
10:17:35 ago on the corner, or three years ago on the
10:17:38 corner of my street and of course I gave the

10:41:43 vinyl records?
10:41:43 Q The vinyl.
10:41:43 MR. KATRIEL: You're talking about
10:41:44 records?
10:41:45 MR. MITTELSTAEDT: Yeah, records.
10:41:45 A I know. Unfortunately I don't think
10:41:48 I do.
10:41:52 Q How many CD's do you have that you
10:41:54 have burned?
10:42:00 A Maybe 10.
10:42:06 Q And those are CD's you burned from
10:42:09 music you bought from Apple?
10:42:11 A No. As I said, this could be
10:42:14 combination. If I use the iTunes software, I load
10:42:18 a physical CD that I bought in a store or somebody
10:42:23 gave to me, I choose some songs from there. It
10:42:26 may be a mixture, I may have some songs that are
10:42:28 from a physical CD that I loaded, it may be some
10:42:31 songs I bought from Apple, it may be a combination
10:42:33 of two CD's that I bought.
10:42:36 Q And then you make a play list and
10:42:37 then you burn the play list?
10:42:39 A Right, exactly.
10:42:39 Q And then when you burn a CD in that
10:42:43 fashion, how do you use the CD?

10:42:48 A To play it in a car most of the time
10:42:50 because I cannot listen to the iPod say in the
10:42:53 car.
10:42:57 Q And have you ever copied that CD
10:43:00 back onto your computer?
10:43:03 A The CD that I already burned?
10:43:05 Q Yes.
10:43:06 A No. Why would I do that?
10:43:13 Q Do you -- let's walk through the
10:43:15 process that you use to make -- first of all,
10:43:20 let's walk through the process you used to copy a
10:43:24 CD into your Dell computer.
10:43:26 A Uh-hum.
10:43:26 Q Could you just walk through how you
10:43:28 do that?
10:43:29 A Well, I take a CD and install it
10:43:32 into the drive, the iTunes open up, and I usually
10:43:39 would create a play list and copy the songs that
10:43:45 appear in the window. I might do it in some
10:43:47 backward fashion. Copy the songs that appear in
10:43:50 the window that I like, or sometimes it's the
10:43:53 whole CD, into the play list and it will
10:43:55 automatically be saved into the general iTunes
10:43:59 library as well.
10:44:00 Q Do you pay any attention to the

format that's being used to copy the music, copy the CD into iTunes?

A You know, I did actually recently because when I realized that I cannot load any other music away from iTunes. In other words, I don't know exactly what the format name but I realized that if I go to any other Web site that legally sells music, I cannot download, buy and download this music into My iTunes. In other words --

Q Go ahead.

A -- the two ways that I can actually get my music into the software is, A, to purchase it from Apple, or B, to copy it from existing CD, you know, hard CD.

Q You say that you recently realized you can't load music from --

A Well, recently may be a year ago. To answer this year question. I do aware that there is a certain format exist in which music can be saved, and this is different, and Apple uses one format, the other companies -- I mean the other music could come in a different format. That's to answer your question.

Q But when you said that you realized

11:00:19 A Well, I wanted to work out with something that would not skip as a CD player and I just think -- I don't remember why I choose iPod over it, maybe the advertising was all over in my face, I don't remember.

11:00:40 Q Have you heard people say that the iPod's cool?

11:00:43 A You know, I don't really socialize with very young people fortunately or unfortunately who would refer iPod to me.

11:00:51 Q Okay. But have you heard the iPod referred to as the cool factor?

11:00:55 A Well, that's not why I bought it. Maybe I heard.

11:01:00 Q But did you shop around and compare the iPod with others?

11:01:04 A No. You know what happened, it's there in Short Hills Mall and I walked -- and I heard about iPod, because they have very good advertising, and I happened to like Macintosh a lot, and I don't think I ever owned one, but I really loved the way it looked, so I just went and bought it.

11:01:22 Q Did you like the way the iPod looked?

A Yes.

Q I mean, did you try it out at the store before you bought it?

A No, I just went and bought it.

Q What did you like about its looks?

A Well, I mean, I like it's kind of slim and, you know, it looks nice.

Q Did you feel like anything or anybody forced you to buy the iPod?

A The first iPod for sure, no.

Q And you could have bought any other mp3 player at the time if you had wanted to, right?

A I guess. There was no force. The first, no.

Q When you were at the Apple store, did you talk, the first time when you bought your first iPod, did you talk with anybody at Apple about the iPod or about your decision-making process?

A I don't remember. Well, you know, I might have discussed how to use it which -- I mean maybe we talked about the megabytes, gigabytes or whatever, the memory size that is, and which one makes more sense for me.

11:18:08 Q Okay. Do you know -- well, let me
11:18:11 just ask you this: Did anybody force you to buy
11:18:14 that for her?
11:18:15 A She. She forced me to buy that for
11:18:18 her. She said she wants an iPod. I said what do
11:18:24 you want for your birthday? I said cool, I will
11:18:26 get you an iPod Mini.
11:18:29 Q Did she tell you why she wanted an
11:18:31 iPod?
11:18:32 A She said she wants to work out, she
11:18:34 needs to lose weight. That was as far as we went.
11:18:35 Q But did she tell you why an iPod
11:18:37 rather than another mp3 player?
11:18:40 A I don't think we had that
11:18:42 conversation at all.
11:18:43 Q Were you aware at that time that
11:18:43 there were other mp3 players that could be used
11:18:47 for working out and playing digital music?
11:18:50 A Maybe.
11:18:51 Q What do you mean "maybe"?
11:18:53 A Probably I was aware, I don't
11:18:54 remember. I'm aware -- I'm aware of it now for
11:18:58 sure and I know I probably knew about it, because
11:19:01 I think I met a guy in a gym who was using
11:19:05 something else, so I knew that.

11:49:08 bought any new device other than iPod, I would
11:49:12 assume it either will have to come with some
11:49:15 software or I can use the existing computer
11:49:18 software which came like Windows Media Player or
11:49:21 something like that, and I would go to other Web
11:49:23 sites that are out there and buy music from them
11:49:30 and burn my CD's, load them into computer, and
11:49:34 then transfer them into my mp3 player, but I never
11:49:38 looked into that closely, so I really don't know.
11:49:41 Q Okay. Do you have any understanding
11:49:44 as to whether if you bought a competing mp3 player
11:49:50 you could use all of the music in your iTunes
11:49:55 library just by having another library, either
11:49:58 Windows Media or some other library on your
11:50:02 computer?
11:50:02 A You mean, let me rephrase the
11:50:05 question. You mean, could I transfer the music
11:50:07 from iTunes library into an XYZ library and copy
11:50:12 it into the new mp3 player?
11:50:15 Q Correct.
11:50:16 A And the question is?
11:50:17 Q Is it your understanding that you
11:50:19 can do that?
11:50:19 A My understanding is that I cannot do
11:50:21 that.

11:50:21 Q Even with your CD collection that
11:50:24 you burned onto your computer or copied onto your
11:50:27 computer?
11:50:29 A I don't know if the CD is because
11:50:32 actually now that you started me thinking the CD
11:50:35 maybe I would be able to copy, but I don't think
11:50:38 so. I think that anything that is on an iTunes
11:50:42 library I can only use with iPod. ITunes, iPod,
11:50:47 clear I cannot use.
11:50:51 Q And so your belief is that if you
11:50:54 got a competing mp3 player you'd have to start all
11:50:57 over and copy your CD's from the physical CD into
11:51:01 a different library, get music from other music
11:51:04 stores, put it into the different library; is that
11:51:07 correct?
11:51:07 A Right.
11:51:07 Q Now that we've talked about this
11:51:10 some more, can you tell me where you got that
11:51:14 idea?
11:51:19 A I'm thinking. I'm trying to. I
11:51:27 mean, I don't remember if somebody told me that in
11:51:30 a store, it's possible, or it could be that I'm
11:51:33 just understanding it because Apple names their
11:51:36 products in such way that I just start thinking
11:51:40 that this is, you know, Apple products and you

on iPod.

Q Does your son watch cartoons on the iPod?

A He is not allowed, but he does. They're there, I mean, I don't even know how to delete them. So like, for example, I loaded, I wanted to know what this thing, all this noise about this group Strokes, this New York City group Strokes and I bought a video, you know, how do you say it, video clip from iTunes for that music, and it's a little explicit, but somehow it's in my iPod. I mean not somehow, I know that it should be in my iPod, I synched it, and my son saw it, so I'm not nuts about him watching it.

Q Okay. So he does watch videos on your iPod?

A Sometimes.

Q When you bought the newest iPod, did you think to yourself that you were paying too much for it?

A Surely of course, I thought it was expensive, I think all iPods are very expensive.

Q When you bought the first iPod, did you think it was expensive?

A I thought it was expensive.

01:34:31 Q Has your husband done anything other
01:34:33 than talk to you in an effort to get other people
01:34:36 to join?
01:34:36 A No.
01:34:47 Q When you bought your iPod, did
01:34:50 anyone at Apple tell you you couldn't buy an iPod
01:34:54 unless you also agreed to buy music from Apple's
01:34:57 online music store?
01:35:00 A I don't remember. Which iPod you
01:35:03 referring to? Both?
01:35:05 Q Any of the three.
01:35:07 A I don't think so, no.
01:35:13 Q Can you use your iPod without ever
01:35:16 buying any music from Apple?
01:35:21 A In other words, can I use my iPod
01:35:24 with only the CD's that I loaded?
01:35:27 Q Let's start there. You can use your
01:35:29 iPod with CD's that you load without ever buying
01:35:32 any music from Apple, correct?
01:35:34 A Well, nobody forces me to give them
01:35:37 a credit card and buy music, that's clear, but why
01:35:41 would I not?
01:35:42 Q Well, could you just answer the
01:35:45 question? You can use an iPod to play music from
01:35:49 your music collection, from your CD collection,

01:58:36 Q When he buys music from iTunes Music
01:58:39 Store, what does he do with it, if you know?
01:58:42 A Oh, just I think once he loaded some
01:58:47 music and we made a little CD with it to go, when
01:58:50 we were traveling and went to Miami and wanted to
01:58:54 listen in the car. And sometimes he just buys the
01:58:57 music for our son that he thinks our son would
01:59:01 like.
01:59:02 Q Okay.
01:59:02 A And then whatever our son does with
01:59:04 that, which is listen to it.
01:59:07 Q Looking at this first set of pages
01:59:08 16 to 17, can you tell us or approximate how many
01:59:11 of these songs you or your husband has burned to a
01:59:16 CD?
01:59:17 A I think if I had to hum and all that
01:59:27 line?
01:59:29 Q Yes.
01:59:31 A Is something that we made a CD with,
01:59:43 you know, burning copy on a CD.
01:59:57 And Here It Is, By the River Dark,
02:00:00 Alexandra Leaving, You Have Loved Enough, I think
02:00:04 that's also. I think it was just one CD that he
02:00:06 made.
02:00:12 Q And do you have at home all the CD's

02:39:57 A No, I did not tell him that.
02:39:59 Q Was there any similar model that
02:40:02 didn't have video?
02:40:04 A I don't remember. I think they all
02:40:05 had videos in the big ones. In other words, in
02:40:08 the big ones meaning the full-blown iPod as
02:40:11 opposed to Mini.
02:40:13 Q Okay. And if there had been a
02:40:14 full-blown iPod, to use your description, without
02:40:18 the video, that's what you wanted to purchase,
02:40:20 right?
02:40:21 A I could have purchased that. I
02:40:22 could have purchased the one that's video. It's
02:40:25 just a nice edition, it didn't hurt to have the
02:40:28 video. It's not like I was objecting to that.
02:40:30 Q Because, in fact, your son has used
02:40:33 the video to watch cartoons, right?
02:40:34 A Yeah, but I'm actually against that.
02:40:37 Q And another reason that you bought
02:40:40 the iPod was you didn't think you could transfer
02:40:45 your CD collection to a competing mp3 player
02:40:51 without starting over and copying these physical
02:40:55 CD's into a new library, correct?
02:40:57 A Let me rephrase it a little bit. I
02:41:00 wouldn't say another reason. The only reason, I

02:41:03 mean the main reason I bought iTunes -- I'm
02:41:06 sorry -- iPod is because I wanted to use my iTunes
02:41:09 because I knew I could only, I knew, I thought,
02:41:13 that I can only use my iTunes library on an iPod.
02:41:17 Q And that's something you had thought
02:41:20 from the first time you used an iPod, right?
02:41:23 A More or less again.
02:41:25 MR. MITTELSTAEDT: Okay.
02:41:26 MR. KATRIEL: I have nothing
02:41:27 further. Thank you.
02:41:27 MR. MITTELSTAEDT: Thank you.
02:41:29 Just one second.
02:41:33 Okay. Thank you.
02:41:35 (Whereupon, witness excused.)
02:41:36 THE VIDEOGRAPHER: The time is 2:43
02:41:37 p.m., Wednesday, January 24th, 2007. This
02:41:45 is the end of tape number two and completes
02:41:47 the videotaped deposition of Marianna
02:41:49 Rosen. We're off the record.
02:41:50 (Whereupon, off the record.)
02:42:46 (Whereupon, videotaped deposition
02:42:46 adjourned 2:42 p.m.)

CERTIFICATE

I, JOSEPHINE H. FASSETT, a Certified Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that the witness, MARIANNA ROSEN, whose videotaped deposition is hereinbefore set forth, was sworn by me on the date indicated, and that the foregoing deposition is a true and accurate record of the testimony given by such witness.

I FURTHER CERTIFY that I am not employed by nor related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Josephine H. Fassett

JOSEPHINE H. FASSETT, CSR, CLR
New York Notary Public